

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JULIAN MARTINEZ PEREZ, ET AL.,

Plaintiffs,

18-cv-5834 (JGK)

- against -

MEMORANDUM OPINION AND
ORDER

WEST SIDE PIZZA LLC, ET AL.,

Defendants.

JOHN G. KOELTL, District Judge:

The Court has reviewed the Report and Recommendation of Magistrate Judge Wang dated April 4, 2024. The Report recommends that a judgment be entered against the defendants West Side Pizza LLC (d/b/a West Side Cafe and Pizza), West Side 72, Inc. (d/b/a West Side Cafe and Pizza), and Akbar Hossain (a/k/a Sohud Ahmed) for \$226,479.00, inclusive of \$5,670.00 for attorney's fees and \$534.00 for costs. See ECF No. 98.

For the plaintiff Martinez, the individual damages award of \$166,795.00 breaks down as follows: \$77,835.00 for wage damages, \$10,000.00 for wage notice and wage statement violations, \$77,835.00 for liquidated damages, and \$1,125.00 for tools of the trade. Id. For the plaintiff Mendoza, the individual damages award of \$53,480.00 breaks down as follows: \$21,003.25 for wage damages; \$10,000.00 for wage notice and wage statement violations; \$519.25 for spread of hours damages; \$21,522.50 in liquidated damages; and \$435.00 for tools of the trade. Id. The

Report also recommends that the Court award pre- and post-judgment interest. Id.

No objections have been filed to the Report and Recommendation, and the time for any objections has passed. In any event, the Court finds that the Report and Recommendation is well reasoned and substantially correct. The Court therefore adopts the Report and Recommendation as modified by this Memorandum Opinion and Order.

The Court clarifies that the plaintiff referred to in footnote four of the Report, id. at 8 n.4, is Martinez. The Magistrate Judge properly exercised her discretion to elect the statute that provides the greatest amount of relief, namely, the New York Labor Law. Id. at 7, 9. The Court therefore agrees that back pay should be calculated for Mendoza beginning June 27, 2012, and for Martinez beginning February 1, 2014. Id. at 11-12.

The Magistrate Judge has also recommended that pre-judgment interest accrue from the median date of each plaintiff's relevant employment period to August 7, 2023, the date when this Court entered an order of default against the defendants. Id. at 17-18. However, the recommended accrual dates for pre-judgment interest would result in the plaintiffs accruing post-judgment interest on a judgment that has not yet been entered. Therefore, the Court orders that pre-judgment interest be awarded from the median dates found by the Magistrate Judge to the date that

judgment is entered by the Clerk of Court, in a final amount to be calculated by the Clerk.

CONCLUSION

The Clerk is directed to enter judgment as follows:

(1) In favor of the plaintiffs and against the defendants West Side Pizza LLC (d/b/a West Side Cafe and Pizza), West Side 72, Inc. (d/b/a West Side Cafe and Pizza), and Akbar Hossain (a/k/a Sohud Ahmed), jointly and severally, as follows:

(a) For damages to the plaintiff Julian Martinez Perez in the amount of \$166,795.00;

(b) For damages to the plaintiff Sergio Solano Mendoza in the amount of \$53,480.00;

(c) For attorney's fees for both plaintiffs in the amount of \$5,670.00;

(d) For costs for both plaintiffs in the amount of \$534.00; and

(e) For the plaintiff Julian Martinez Perez, pre-judgment interest pursuant to New York Civil Practice Law & Rules § 5004, in the amount of \$19.19 per day, from April 6, 2016 through the date that judgment is entered by the Clerk of Court;

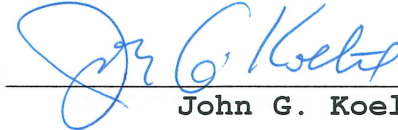
(f) For the plaintiff Sergio Solano Mendoza, pre-judgment interest pursuant to New York Civil Practice Law & Rules § 5004, in the amount of \$5.83 per day, from December 26, 2017 through the date that judgment is entered by the Clerk of Court; and

(f) Post-judgment interest will accrue pursuant to 28

U.S.C. § 1961.

SO ORDERED.

Dated: New York, New York
October 11, 2024



John G. Koeltl
United States District Judge